

# EXHIBIT F

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

-vs-

10-CR-219S

TONAWANDA COKE CORPORATION.  
MARK L. KAMHOLZ,

Defendants.  
-----

Excerpt of proceedings held before  
the Honorable William M. Skretny, U.S.  
Courthouse, 2 Niagara Circle, Buffalo,  
New York, on March 4, 2013.

APPEARANCES:

AARON J. MANGO,  
Assistant United States Attorney,  
ROCKY PAIGGIONE, Senior Counsel,  
U.S. Department of Justice,  
Appearing for the United States.

GREGORY F. LINSIN, ESQ.,  
JEANNE M. GRASSO, ESQ.,  
ARIEL S. GLASNER, ESQ.,  
Appearing for Tonawanda Coke Corporation.

RODNEY PERSONIUS, ESQ.,  
Appearing for Mark L. Kamholz.

Also Present: Lauren DiFillipo, Paralegal  
Sheila Henderson, Paralegal

Michelle L. McLaughlin, RPR,  
Official Reporter,  
U.S.D.C. W.D.N.Y.  
(716) 332-3560

1 government would call Anthony Brossack.

2 THE COURT: Okay. Mr. Witness, if you  
3 would approach the witness stand. Don't enter it,  
4 but -- I'll tell you when to stop. Right about  
5 there. You're going to be asked to face the jury,  
6 please, so we can administer an oath to you.

7 A N T H O N Y B R O S S A C K, having been duly  
8 sworn as a witness, testified as follows:

9 THE COURT: Okay. Good morning. Be  
10 careful when you get in there. Okay. Just some  
11 preliminary instructions. The microphone is pretty  
12 friendly, but don't get right on top of it like  
13 that. Speak in a conversational tone at the  
14 microphone. You're here to testify for the benefit  
15 of the ladies and gentlemen of the jury. If you  
16 keep your voice up at a conversational tone,  
17 everybody will hear you just fine.

18 Couple of rules that help, if you comply with  
19 them. If you don't understand a question, don't  
20 answer it. Ask the attorneys or me or whoever's  
21 asking the question to repeat it. Try to be as  
22 succinct with your answer as you can. If you can  
23 answer it yes or no, try to do that. When you  
24 volunteer information, that's when things become  
25 complicated.

1 followed at the plant?

2 A. Yes.

3 Q. Okay. And would it be fair to say that at  
4 times his attempt to enforce those rules is not  
5 always well received?

6 A. I'm not sure I understand your question.

7 Q. Well, have you ever seen occasions where  
8 Mr. Kamholz has attempted to enforce a particular  
9 environmental rule and the employee or employees  
10 that he's dealing with have not responded well to  
11 that?

12 A. No, not that I can remember. No.

13 Q. You had mentioned about the conversation that  
14 you had with Mr. Kamholz regarding a flare that's  
15 on the top of the battery.

16 A. Yes, sir.

17 Q. And when did you say that happened?

18 A. I believe it was '94, '95. Someplace up around  
19 there.

20 Q. All right. And Mr. Kamholz was asked a  
21 question about the -- the fact that the -- the  
22 pilot light was not on --

23 A. Yes.

24 Q. -- for the flare. And you testified that his  
25 response was that natural gas was expensive?

1 A. Yes.

2 Q. And is that all he said?

3 A. That's all he said to me at that time, yes.

4 Q. And in terms of who made that decision to not  
5 have that natural gas run to the pilot, you don't  
6 know who made that decision, do you?

7 A. No, I don't.

8 MR. MANGO: Objection, your Honor.

9 THE COURT: I'll let it stand. It's asked  
10 and answered. Go ahead.

11 MR. PERSONIUS: And you don't mean to  
12 suggest by your testimony that it was Mr. Kamholz  
13 that made that decision, do you?

14 MR. MANGO: Objection to that, your Honor.

15 THE COURT: Overruled.

16 MR. PERSONIUS: That means you can answer.

17 THE WITNESS: Oh, okay.

18 THE COURT: I'm sorry.

19 THE WITNESS: Could you repeat it, please?

20 BY MR. PERSONIUS:

21 Q. Sure.

22 A. Thank you.

23 Q. You don't mean to suggest by your testimony  
24 that it was Mr. Kamholz who decided that natural  
25 gas would not be run to that pilot?

1 A. No.

2 Q. Thank you. You provided testimony about your  
3 observations of coal tar sludge from Tonawanda  
4 Coke's coking operation being placed on the coal  
5 fields.

6 A. Yes.

7 Q. All right. And the period of time that you  
8 made those observations would have been when?

9 A. Would have been 1990 to '92, and then I went  
10 back to coal handling in 2003. From probably just  
11 about the beginning of 2003, till maybe the fall of  
12 the same year. Someplace in there.

13 Q. Okay. So the early '90s and then again in --

14 A. Yes, 2003.

15 Q. Okay. For some part of 2003 --

16 A. Yeah.

17 Q. -- true?

18 And do you know what the purpose is for putting  
19 the -- mixing the coal tar sludge with the coal --

20 A. Yes.

21 Q. -- before it goes into the coking process?

22 A. Yes.

23 Q. You do know what that is?

24 A. Yes.

25 Q. Okay. Would you please tell the jury why

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1 (Excerpt of proceedings.)

2 (Jury seated.)

3 THE COURT: Welcome back, ladies and  
4 gentlemen. Please have a seat.

5 Okay, Mr. Rogers, you want to come on up? The  
6 attorneys and parties are back present. Our jury  
7 is back, ready to go, roll call waived. And we're  
8 still on the government's case.

9 If you stay right there. Ms. Labuzzetta, if  
10 you would administer the oath.

11 J O N R O G E R S, having been duly sworn as a  
12 witness, testified as follows:

13 THE COURT: Morning, sir.

14 THE WITNESS: Morning.

15 THE COURT: Okay. Have a seat, make  
16 yourself comfortable. A couple of very preliminary  
17 instructions. You seem to know the routine. I'm  
18 going to ask you to speak towards the jury, because  
19 you are here to testify for their benefit. It's  
20 important that you answer the questions as best you  
21 can. Make sure you understand the question. If  
22 you don't, if I ask the question or any of the  
23 attorneys, just let me know. I'll have the  
24 attorneys or I will rephrase the question until you  
25 understand it.

1           Try to be as succinct with your answers as you  
2           can. Don't volunteer information. That seems to  
3           always complicate things. If you can answer a  
4           question yes or no, please try to do that. That's  
5           somewhat helpful.

6           If there's an objection, wait until I rule on  
7           the objection, then I will tell you by instruction  
8           whether to complete your answer, restate your  
9           answer, or wait for another question. Do you  
10          understand?

11                   THE WITNESS: Yes.

12                   THE COURT: We need you to speak in a  
13           conversational tone at the microphone. The  
14           microphone is friendly, but it needs to pick you  
15           up. So state your full name so we can hear how  
16           you're going to do, and spell your last name.  
17           Okay?

18                   THE WITNESS: Jon Rogers, R-O-G-E-R-S.

19                   THE COURT: You'll have to get a little  
20           closer than that, and I think that will help.

21                   All right. Mr. Piaggione, your witness.

22                   MR. PIAGGIONE: Thank you, your Honor.

23                   DIRECT EXAMINATION BY MR. PIAGGIONE:

24                   Q. Mr. Rogers, we've met several times before, is  
25           that correct?

1 A. Yes.

2 Q. And you've expressed a great deal of  
3 nervousness about being here?

4 A. Yes.

5 Q. In fact, you've broken out in hives, is that  
6 correct?

7 A. Yes, I have.

8 Q. Okay. Just try and take your time, take deep  
9 breaths, and just respond to the questions if you  
10 could. Okay?

11 A. Yes.

12 Q. Where are you employed?

13 A. Tonawanda Coke.

14 Q. When did you start?

15 A. March of 1978.

16 Q. All right. So you've been working at Tonawanda  
17 Coke since?

18 A. Yes.

19 Q. Okay. And what positions have you held with  
20 Tonawanda Coke?

21 A. I started as a maintenance man, became a  
22 maintenance supervisor, special projects, on to the  
23 railroad, coke handling, coal handling, and a good  
24 share of other jobs throughout the plant.

25 Q. So as a maintenance worker, did you -- have you

1 worked in virtually all the yard grounds of the  
2 Tonawanda Coke?

3 A. Yes, I have.

4 Q. Okay. And did that include the period between  
5 2005 and 2009?

6 A. Yes, it did.

7 Q. All right. Did you ever work with a bleeder  
8 valve in the by-products area?

9 A. Yes, I did.

10 Q. All right. What work did you do there?

11 A. Repaired steam lines on it, did some crane work  
12 with it.

13 Q. Okay. So you weren't the operator of the  
14 valve?

15 A. No, I was not.

16 Q. Did you install it?

17 A. No, I did not.

18 Q. Okay. Did you work on the installment?

19 A. I think I was a crane operator.

20 Q. Okay. So that was during your employment  
21 between 1978 and 2009, is that correct?

22 A. Yes.

23 Q. Do you know approximately when that was?

24 A. No, I don't.

25 Q. Okay. Did you ever see that bleeder valve

1 release?

2 A. Yes, I did.

3 Q. All right. Have you ever been near the bleeder  
4 in the wintertime?

5 A. Yes, I have.

6 Q. Describe what, if anything, you would observe  
7 when you were near the bleeder in the winter.

8 A. Moisture on the ground and naphthalene  
9 crystals.

10 Q. Okay. And you said you saw it release. How  
11 often did you see it release?

12 A. Frequently.

13 Q. Okay. Can you tell us if it was related to the  
14 reversals at the battery or not?

15 A. Yes, it was.

16 Q. Do you recall ever working at Tonawanda Coke  
17 when the bleeder was hit by lightening?

18 A. Yes.

19 Q. Do you know approximately when that happened?

20 A. No, I don't.

21 Q. Did you respond to it?

22 A. Yes, I did.

23 Q. What did you see?

24 A. About a 10- to 12-foot flame.

25 Q. Okay. And did you work on extinguishing it?

1 A. Yes, I did.

2 Q. What did you do?

3 A. Introduced steam and increased the set point or  
4 the -- to close the valve.

5 Q. How long did it take to get that under control?

6 A. Thirty minutes.

7 Q. All right. To your knowledge was that bleeder  
8 valve hit by lightening again?

9 A. One other time that I remember.

10 Q. Okay. Did you see the bleeder valve release  
11 between 2005 and 2009?

12 A. Yes, I did.

13 Q. And how often did that happen?

14 A. Frequently.

15 Q. Do you know Mark Kamholz?

16 A. Yes, I do.

17 Q. How long have you known him?

18 A. Since I started there.

19 Q. All right. Is he in the courtroom today?

20 A. Yes, he is.

21 Q. Can you point him out?

22 A. Right there.

23 MR. PIAGGIONE: Okay. Let the record  
24 reflect that the witness has identified  
25 Mr. Kamholz.

1 THE COURT: Yeah, the record will so  
2 reflect, and Mark Kamholz the defendant has been  
3 identified by Mr. Rogers.

4 BY MR. PIAGGIONE: '

5 Q. Okay. Who is the environmental control manager  
6 at Tonawanda Coke Corporation?

7 A. Mark Kamholz.

8 Q. Okay. If -- did Mark Kamholz, as environmental  
9 control manager, have the authority to give you  
10 directions?

11 A. Yes, he did.

12 Q. And if Mark Kamholz, as the environmental  
13 control manager, gave you an order to perform some  
14 work at Tonawanda Coke, did you have to do it?

15 A. Yes.

16 Q. Can you recall an example of when Mark Kamholz,  
17 as the environmental control manager, gave you an  
18 order to do some work at Tonawanda Coke?

19 A. I dug a settling pond for him.

20 Q. Okay. In the course of your duties working at  
21 the -- in the by-products area, did you ever see  
22 Mr. Kamholz in that area?

23 A. Yes.

24 Q. How often did you see him there?

25 A. Frequently.



1 Q. Okay. Did you see him in the by-products area  
2 between 2005 and 2009?

3 A. Yes.

4 Q. All right. And how often did you see Mark  
5 Kamholz in the by-products area during the period  
6 between 2005 and 2009?

7 A. Sorry, repeat that.

8 Q. Okay. How often did you see Mr. Kamholz in the  
9 by-products area during the period between 2005  
10 and 2009?

11 A. Frequently.

12 Q. Okay. Did you bother to count how many times  
13 you saw Mr. Kamholz in the by-products area?

14 A. No, I didn't.

15 Q. In the course of your employment at Tonawanda  
16 Coke since 1978 through 2009, who, if any one, in  
17 Tonawanda Coke had the responsibility to determine  
18 if the bleeder valve in the by-products area needed  
19 a permit to comply with the Clean Air Act?

20 MR. PERSONIUS: Objection, your Honor.

21 THE COURT: Sustained.

22 MR. PIAGGIONE: Do you know who in  
23 Tonawanda Coke had the responsibility to determine  
24 if the bleeder valve in the by-products area needed  
25 a permit to comply with the Clean Air Act?

1 MR. LINSIN: Objection, your Honor, same  
2 question.

3 THE COURT: It is. Sustained.

4 MR. PIAGGIONE: If the -- if the bleeder  
5 valve in the by-products area needed a flare to  
6 comply with the Clean Air Act, who would determine  
7 that?

8 MR. LINSIN: Objection, your Honor. First  
9 of all, it's a hypothetical question, and there's  
10 no foundation at all with this witness for this  
11 kind of -- line of questioning.

12 THE COURT: I mean, it's -- I mean, it's  
13 certainly compound in terms of what you're asking  
14 for, so I'll sustain the objection.

15 BY MR. PIAGGIONE:

16 Q. In the course of your employment at Tonawanda  
17 Coke, who has the responsibility to determine  
18 compliance with the environmental regulations at  
19 the facility?

20 A. Mark Kamholz.

21 Q. Okay. And would that include whether or not a  
22 bleeder valve in the by-products area needed a  
23 permit or not?

24 MR. PERSONIUS: Objection.

25 THE COURT: Foundation? Grounds.

1 Sustained.

2 MR. PIAGGIONE: If a valve needed a permit  
3 pursuant -- who determined whether or not a valve  
4 at Tonawanda Coke needed a valve -- needed a permit  
5 for a valve in the by-products area?

6 MR. PERSONIUS: Objection, foundation.

7 THE COURT: And form. Sustained.

8 MR. PIAGGIONE: Yes. Okay. I'm sorry.  
9 Withdrawn.

10 Who determined at Tonawanda Coke if something  
11 was subject to environmental regulations at  
12 Tonawanda Coke?

13 MR. PERSONIUS: Objection, asked and  
14 answered.

15 THE COURT: No, I'll permit that.

16 THE WITNESS: Mark Kamholz.

17 BY MR. PIAGGIONE:

18 Q. Okay. So if you -- that's good enough. In the  
19 course of your duties, did you work in the area  
20 between the ovens and the quench towers?

21 A. Yes, I did.

22 Q. What was the work you did in that area?

23 A. Railroad work.

24 Q. What is the time frame you're talking about?

25 A. From 1991 until present.

1 Q. Okay. In the course of your duties did you  
2 ever look inside the quench towers?

3 A. Yes, I did.

4 Q. When you started were there baffles in those  
5 towers?

6 A. Yes, there were.

7 Q. Okay. In the east tower?

8 A. Yes.

9 Q. How about the west tower?

10 A. No.

11 Q. Okay. Did there come a time that the east  
12 tower no longer had baffles?

13 A. When it was shortened.

14 Q. Okay. And do you recall when that happened?

15 A. I don't.

16 Q. Okay. So when it was shortened, was the  
17 baffles replaced, or was it just never put in?

18 A. Not that I know of.

19 Q. Okay. Were you in the east quench tower after  
20 the tower was shortened?

21 A. Yes.

22 Q. Okay. And did it have baffles?

23 A. No.

24 Q. Okay. Were you ever in the east quench tower  
25 between the period of 2005 and October 2009?

1 A. Yes.

2 Q. Did the east quench tower have baffles then?

3 A. No.

4 Q. Did there come a time when you had discussion  
5 with Mark Kamholz about no baffles in the tower?

6 A. Yes.

7 Q. Okay. Can you please describe the  
8 circumstances leading up to that discussion?

9 A. There was an article in the Tonawanda News that  
10 stated there was baffles in that tower. I went to  
11 Mr. Crane and told him there weren't. And --

12 MR. LINSIN: Objection, nonresponsive.  
13 Question related to a conversation with  
14 Mr. Kamholz.

15 THE COURT: Yeah. Do you want me to  
16 strike that answer?

17 MR. LINSIN: Yes, please.

18 THE COURT: Okay. I'll grant the motion  
19 to strike.

20 You may have heard that, ladies and gentlemen,  
21 but it's not proper for you to consider it in  
22 connection with the question that was asked, so  
23 disregard it, please.

24 BY MR. PIAGGIONE:

25 Q. Did you have a discussion with Mr. Kamholz

1 about the lack of baffles in the east quench tower?

2 A. I asked him why he didn't tell Mr. Crane about  
3 it.

4 Q. Okay. What was his response?

5 A. He said he did.

6 Q. Okay.

7 MR. PERSONIUS: Could we have, while we're  
8 on the subject, a time frame please, Judge?

9 THE COURT: Yes.

10 BY MR. PIAGGIONE:

11 Q. Sure. Do you recall when this was  
12 approximately?

13 A. No, I don't.

14 Q. Was it in 2009?

15 MR. LINSIN: Objection.

16 THE WITNESS: I'm sorry, I don't.

17 THE COURT: Leading?

18 MR. LINSIN: The witness has just  
19 testified he doesn't remember.

20 MR. PIAGGIONE: Your Honor, if I can, I  
21 believe he can recall the dates based upon events,  
22 so I can ask him about an event --

23 THE COURT: Based upon events?

24 MR. PIAGGIONE: Yes.

25 MR. LINSIN: Then --

1 THE COURT: Okay.

2 BY MR. PIAGGIONE:

3 Q. All right. Do you recall when the baffles were  
4 installed in the east quench tower?

5 A. No, I don't, I'm sorry.

6 Q. Do you recall the baffles being installed in  
7 the east quench tower?

8 A. Yes, I do.

9 Q. Okay. What was the time period preceding that  
10 that you had the conversation with Mr. Kamholz?

11 A. Short -- short time. Less than a month.

12 MR. PIAGGIONE: Okay. And then subject to  
13 connection as to when the baffles were placed in  
14 the tower, your Honor, with subsequent evidence we  
15 can identify that time frame.

16 THE COURT: I'm not sure what you're  
17 asking for, Mr. Piaggione.

18 MR. PIAGGIONE: I'm just saying, your  
19 Honor, that he relates it to that, and subsequent  
20 evidence will indicate what date that was.  
21 Approximately.

22 THE COURT: Okay. You may continue. Keep  
23 your voice up too when the ask the questions,  
24 because you're trailing I think, unless it's my  
25 hearing again. No, not this time?

1 MR. PIAGGIONE: Okay. I'll speak up, your  
2 Honor. I think I've been sitting too long.

3 Based upon your experience at Tonawanda Coke  
4 regarding environmental issues -- excuse me.  
5 Withdrawn. During the course of your duties at  
6 Tonawanda Coke, if there was a question about  
7 environmental compliance, who did you ask?

8 MR. LINSIN: Your Honor, I'm going to  
9 object. I think this is the third time this  
10 question has been asked. And answered.

11 THE COURT: You know, I'm not sure. I  
12 think it is different. I'll permit it. I'm not  
13 sure it's necessarily relevant. But, you know, I  
14 guess subject to connecting up, overruled.

15 MR. PERSONIUS: If it speeds it along,  
16 I'll stipulate that Mr. Kamholz was the  
17 environmental control manager at Tonawanda Coke.  
18 And he handled environmental issues. If that's  
19 helpful. We don't dispute, Judge.

20 THE COURT: Okay. Lets --

21 MR. PERSONIUS: So we can move along.

22 THE COURT: Let's go from there,  
23 Mr. Piaggione.

24 BY MR. PIAGGIONE:

25 Q. Okay. In the course of your duties have you



1 had to deal with the coal tar bin?

2 A. Yes, I have.

3 Q. And where is that located?

4 A. Broadway in the by-products department.

5 Q. I'm asking for Exhibit 3.11, which I believe is  
6 already in evidence.

7 Can you identify that, sir?

8 A. That's the tar bin.

9 Q. Okay. And what, if anything, did your duties  
10 have to do with the tar box?

11 A. If I saw it needed cleaning, I would call an  
12 end loader to clean it.

13 Q. How was it emptied?

14 A. The end loader would line himself up, put the  
15 bucket in there, get the bucket full, let it drip  
16 off, and take it to the coal field.

17 Q. And where was it taken?

18 A. To the coal field.

19 Q. Would you give the operator of the front end  
20 loader which coal pile to take it to?

21 A. No, I wouldn't.

22 Q. Did you ever empty the tar box?

23 A. Yes.

24 Q. Okay. Did you ever observe the coal being  
25 mixed with the coal tar sludge?

1 A. Yes.

2 Q. All right. And describe what you observed.

3 A. The end loader would drive up to the pile, put  
4 the bucket up high. In the process of dumping the  
5 bucket into the pile, the tar would be up on the  
6 pile. He would back drag it, and then put more  
7 coal over it. Back drag it, put more coal over it  
8 to mix it in.

9 Q. Did you observe it hit the ground at any time  
10 during the process?

11 A. Once in a while.

12 Q. Okay. Was there anyone telling you not to have  
13 the coal tar reach the ground while mixing?

14 A. No.

15 Q. Was there any precautions made to prevent it  
16 from being hit by the rain or the snow?

17 A. No.

18 Q. Was there any lateral walls around it to  
19 prevent it from spreading out?

20 A. No.

21 Q. Did you observe that when you first started at  
22 Tonawanda Coke Corporation?

23 A. Yes.

24 Q. Have you seen this mix of coal pile taken for  
25 use in the coke ovens?

1 A. Yes.

2 Q. Did there come a time when you -- when a wall,  
3 concrete pad was installed near the coal field?

4 A. Yes.

5 Q. Do you recall when that was?

6 A. No.

7 Q. Did the installation of the pad change when the  
8 tar box was emptied?

9 A. No.

10 Q. Did you observe others empty the tar box after  
11 the pad was installed?

12 A. Yes.

13 Q. Where did you observe them put the coal tar  
14 sludge?

15 A. Coal piles.

16 Q. How often did you observe that?

17 A. Sometimes daily, sometimes not as frequently.

18 Q. All right. Did there come a time when bringing  
19 the tar box sludge directly to the coal fields  
20 stopped?

21 A. Yes.

22 Q. When was that if you can recall?

23 A. After the search warrant.

24 Q. Okay. And prior to that event, did you ever  
25 observe coal tar sludge on the concrete pad?

1 A. Yes.

2 Q. Okay. Ms. DiFillipo, can you put up  
3 Exhibit 303, which is also in evidence?

4 And can you tell us what that is?

5 A. It's coal tar sludge.

6 Q. Okay. And can we have -- is that the -- coal  
7 tar sludge where?

8 A. On the concrete pad.

9 Q. All right. So that's the pad with coal tar  
10 sludge on it?

11 A. Yes.

12 THE COURT: Speak into the microphone,  
13 please.

14 THE WITNESS: Yes.

15 THE COURT: Thank you.

16 BY MR. PIAGGIONE:

17 Q. I'd ask you if you can identify what I'm going  
18 to point out in that lower left-hand corner.

19 A. That's the ramp for the pug mill.

20 Q. Can I have Exhibit 3.02 please?

21 Can you identify that picture?

22 A. That's the pug mill.

23 Q. That's already in evidence.

24 THE CLERK: You need to say that.

25 MR. PIAGGIONE: Okay, I'm sorry.

1 BY MR. PIAGGIONE:

2 Q. And can you identify that object?

3 A. That's the pug mill.

4 Q. Okay. What was the purpose of the pug mill?

5 A. It's a mixing device to mix product.

6 Q. Was it supposed to mix the coal tar sludge on  
7 the pad with coal?

8 A. It was supposed to mix or -- mix the coal tar  
9 up and either put it on the coal or mix it with  
10 coal, yes.

11 Q. Okay. Where would the material be placed after  
12 it was mixed from the pad through the machine?

13 A. On to a conveyor belt and up through the  
14 system.

15 Q. So with this process, would the coal tar sludge  
16 touch the ground in any way?

17 A. No.

18 Q. Do you know how long that machine was in  
19 operation?

20 A. It was attempted to be used, but it was a short  
21 period of time.

22 Q. And do you know if there was any problems with  
23 running that particular --

24 A. Yes. It was very difficult to use.

25 Q. Okay. I'm going to go to Exhibit 125.03, which

1 is already in evidence.

2 Ask you if you can recognize that.

3 A. Yes. It's the area around the tanks that  
4 burned.

5 Q. Okay. When did you first observe that area, do  
6 you know?

7 A. Early 1980s.

8 Q. Okay. And can you describe what it was like to  
9 try and walk in that area at that time?

10 A. There was spots of tar.

11 Q. Okay. When you say "spots of tar", what do you  
12 mean?

13 A. It wasn't the whole surface that was covered.  
14 There was just spots of tar here and there.

15 Q. And how big of an area are we talking about?

16 A. 250 feet square.

17 Q. All right. And on the spots of tar, what was  
18 it like to try and walk in those spots?

19 A. You'd try not to step in the tar.

20 Q. Okay. Without mentioning the event that causes  
21 you to remember this, did there come a time in 1998  
22 when the surface of that area was modified in any  
23 way?

24 A. Yes. A share of the area approximately 150  
25 feet square was filled in.

1 Q. And what was it filled in with?

2 A. Coke breeze.

3 Q. And what, if anything, did you observe happen  
4 to that tar sludge over time as a result of that  
5 filling in?

6 A. The tar sludge was compacted or forced into a  
7 smaller area around the tanks themselves.

8 Q. Okay. So it moved, the tar sludge moved?

9 A. Yes. Depressed. The process of filling the  
10 area in would cause the tar to move to a -- to the  
11 low area.

12 Q. Would that include equipment running over  
13 the --

14 A. Yes.

15 Q. Okay. Now, how long of an area was the tar  
16 sludge then?

17 A. It was into an area approximately a hundred --  
18 a hundred feet square, but the tanks were also in  
19 that area.

20 Q. Okay. How deep was it, if you know?

21 A. After the fire it was 2 to 3 feet between the  
22 tanks.

23 Q. Okay. And you mentioned a fire. Now, was that  
24 fire involving near the storage tanks?

25 A. Yes, it was.

1 Q. Okay. I'd like to have -- do you know what  
2 date that was?

3 A. July of 2008.

4 Q. Okay. Now, did you respond to the fire?

5 A. Yes, I did.

6 Q. All right. Can you tell us what the fire --  
7 how big the fire was?

8 A. It incorporated a good share of the area.

9 Q. Okay. Now, what was in the tanks that --  
10 before the fire occurred?

11 A. Tar sludge.

12 Q. Okay. How do you know that?

13 A. There were holes. The tanks were starting to  
14 rust. There were holes in them. You could see  
15 into them.

16 Q. And when the fire occurred, what was on fire?

17 A. The actual tar around the tanks.

18 Q. Okay. So this was the tar that had been moved  
19 over towards the tanks?

20 A. Yes.

21 Q. Okay. Now, in the course of your duties, did  
22 there come a time that you informed that there  
23 was going -- they were going to scrap those tanks?

24 A. Yes.

25 Q. Okay. And what, if anything, did you do?



1 A. I filled right around the tanks themselves with  
2 more coke breeze to allow access of machinery to  
3 take the tanks down.

4 Q. And how much coal breeze did you put down?

5 A. Approximately 10 buckets, 50 tons.

6 Q. Okay. And what happened to the coal tar  
7 sludge?

8 A. It was combined into an even smaller area.

9 Q. Okay. Now, this was before the fire or after  
10 the fire that you did that?

11 A. This was before the fire.

12 Q. Okay. Did you observe the fire -- I'm sorry.  
13 Withdrawn.

14 After this fire, did you speak to Mr. Kamholz  
15 about the tanks?

16 A. Yes.

17 Q. What did you want to do, if anything?

18 A. Clean up the remaining scrap metal and process  
19 the tar sludge.

20 Q. Okay. And you asked Mr. Kamholz's permission  
21 to do that?

22 A. Yes.

23 Q. Okay. And how long after the fire did you  
24 speak to Mr. Kamholz about the tanks?

25 A. It was approximately nine months.

1 Q. And what was his response?

2 A. The first time no.

3 Q. Did he explain why?

4 A. No.

5 Q. Did you ask him more than once?

6 A. Yes.

7 Q. Okay. Did there come a time he gave you  
8 approval to remove the remnants of the tanks?

9 A. Yes.

10 Q. Approximately how long after the fire was that?

11 A. It was approximately a year.

12 Q. Okay. And what, if anything, did you do?

13 A. Removed the scrap metal, and then started  
14 removing the tar sludge from the tanks.

15 Q. Okay. I'm going to go to what's already in  
16 evidence as Exhibit 3.05 please.

17 Okay. Now do you recognize that photograph?

18 A. Yes.

19 Q. Okay. Can you tell us what we are looking at?

20 A. Yes. That's one of the tanks that was  
21 disassembled, and that's the tar sludge in the  
22 tank.

23 Q. Okay. And show this area I'm going mark.

24 What is that?

25 A. That was the area we filled in around the tanks

1 for access.

2 Q. Okay. And what is in the -- in this area?

3 A. That's the tar sludge.

4 Q. Okay. So was there a difference between the  
5 material outside the tank and inside the tanks?

6 A. The stuff outside the tank had coke breeze in  
7 it. The stuff inside the tank didn't.

8 Q. Okay. So what did you do, if anything, with  
9 the contents of the tank?

10 A. Removed it with an excavator, put it in an end  
11 loader bucket, and mixed in the coal piles.

12 Q. Did anyone tell you not to prevent the stuff  
13 from being mixed on the ground?

14 A. No.

15 Q. Was there any attempt to prevent the material  
16 from hitting the ground?

17 A. No.

18 Q. I'm going to go to Exhibit 136.01. It's not in  
19 evidence, for identification only.

20 Now I'm going ask you if you recognize that  
21 photograph?

22 A. That's the tar tank.

23 Q. Okay. And does that depict what the -- what  
24 the tanks looked like when you were working on  
25 them?

1 A. Yes.

2 Q. Okay. Is it a fair and accurate representation  
3 of what you observed?

4 A. Yes.

5 MR. PIAGGIONE: Your Honor, I would move  
6 to have this introduced into evidence as 136.01.

7 MR. LINSIN: No objection, your Honor.

8 MR. PERSONIUS: No objection, your Honor.

9 THE COURT: Okay. 136.01 received, no  
10 objection.

11 (Government's Exhibit 136.01 was received  
12 into evidence.)

13 BY MR. PIAGGIONE:

14 Q. Now, in the background -- what's in the  
15 background of that photograph?

16 A. Coal pile.

17 Q. Is that where you brought the coal tar sludge?

18 A. Yes.

19 Q. Okay. We'll go to marked for Government's --  
20 for identification 136.02 please.

21 Okay. I ask you if you can recognize that  
22 photograph?

23 A. Yes. Again, the same tanks.

24 Q. And is that a fair and accurate depiction of  
25 the area that you worked on to remove the coal tar

1 sludge?

2 A. Yes.

3 THE COURT: Speak into that microphone,  
4 please.

5 MR. PIAGGIONE: Yes, your Honor. I'm  
6 having a little trouble with my throat, and I  
7 apologize.

8 Is that a fair and accurate representation of  
9 what you observed at the time?

10 THE WITNESS: Yes.

11 MR. PIAGGIONE: Okay. At this time the  
12 government would introduce this into evidence as  
13 Government Exhibit 136.02.

14 MR. LINSIN: No objection, Judge.

15 MR. PERSONIUS: No objection.

16 THE COURT: All right. 136.02 received,  
17 no objection. May be published.

18 (Government's Exhibit 136.02 was received  
19 into evidence.)

20 BY MR. PIAGGIONE:

21 Q. Can you describe to the jury what we're looking  
22 at here?

23 A. That's the disassembled tank with the tar  
24 sludge inside of it, and you can see the marks from  
25 the excavator removing some of the tar sludge.

1 THE COURT: All right. Point to that area  
2 please. Tap the screen good. Thank you.

3 BY MR. PIAGGIONE:

4 Q. Okay. And is that the metal you scrapped  
5 around it?

6 A. Yes.

7 Q. Okay. And the road in front of it, is that  
8 what you put in to get access to the coal tar  
9 sludge?

10 A. Yes.

11 Q. Okay. Okay. We will move on to 136.10 for  
12 identification please.

13 Do you recognize that?

14 A. Yes.

15 Q. What is that?

16 A. Different picture of the same thing.

17 Q. Okay. Is that a fair and accurate depiction --

18 MR. LINSIN: Your Honor, we have no  
19 objection to the admission of the photograph if  
20 that's where we're going.

21 THE COURT: Okay. 136.10, Mr. Personius?

22 MR. PERSONIUS: No objection, Judge.

23 THE COURT: That will be received, no  
24 objection.

25 (Government's Exhibit 136.10 was received

1                   into evidence.)

2       BY MR. PIAGGIONE:

3       Q.   Mr. Rogers, I'd ask you if you can explain to  
4       the jury what we're looking at.

5       A.   We're looking at the tank where the tar sludge  
6       was removed.

7       Q.   Okay.   And I'll ask you, is this the wall of  
8       the tank?

9       A.   Yes, it is.

10      Q.   All right.   And this is the insides of the  
11      tank?

12      A.   Yes.

13      Q.   And I notice that it goes down.   Is that the  
14      marks of the excavator?

15      A.   Yes.

16      Q.   Okay.   How deep did that go down?

17      A.   Approximately 5 feet.

18      Q.   Okay.   So it was about 5 feet below the  
19      surface --

20      A.   Yes.

21      Q.   -- of coal tar sludge?

22      A.   Right.

23      Q.   You brought that where?

24      A.   To the coal piles.

25      Q.   Okay.   And you mixed it on the ground there?

1 A. In the coal piles.

2 Q. And was there anything to prevent it from  
3 hitting the ground?

4 A. No.

5 Q. Was the coal piles on the ground?

6 A. Yes.

7 Q. We'll go on to Government Exhibit 136.12 for  
8 identification only.

9 THE COURT: What's the number again?

10 MR. PIAGGIONE: 136.12.

11 THE COURT: I don't think you have that  
12 listed.

13 MR. PIAGGIONE: Eleven, I'm sorry.

14 THE COURT: Okay. Do we have any  
15 objection?

16 MR. LINSIN: No objection, your Honor.

17 MR. PERSONIUS: None, your Honor. Thank  
18 you.

19 THE COURT: Okay. 136.11, no objection,  
20 received. And may be published.

21 (Government's Exhibit 136.11 was received  
22 into evidence.)

23 MR. PIAGGIONE: Thank you, your Honor.

24 BY MR. PIAGGIONE:

25 Q. Could you explain what we're looking at here?



1 A. That's the other tank.

2 Q. Okay. So that was -- there was two tanks  
3 involved, and this was the second one?

4 A. Yes.

5 Q. Okay. And is that the walls of the tank?

6 A. Yes.

7 Q. And what is this material in front of it?

8 A. That's the coke breeze that was put in there as  
9 fill.

10 Q. Okay. And what's inside here?

11 A. That's tar sludge.

12 Q. And where did that tar sludge go?

13 A. To the coal field.

14 Q. And did you mix it with the coal there?

15 A. Yes.

16 Q. Was the coal piles on the ground?

17 A. Yes.

18 Q. Was there anything to prevent the material from  
19 hitting the ground?

20 A. No.

21 Q. Was there anything to prevent it -- from the  
22 rain falling on it?

23 A. No.

24 Q. Did anyone tell you not to put it on the  
25 ground?

1 A. No.

2 Q. Incidentally, were you -- did there come a time  
3 that you observed samplers taking samples in this  
4 location?

5 A. Yes.

6 Q. Can you tell us what happened to one of the  
7 samplers, if anything?

8 A. He took a step into one of the areas that was  
9 relatively deep, got his boot stuck.

10 Q. What happened? Did he need help to get out?

11 A. Yes, he did.

12 MR. PIAGGIONE: At this point I have no  
13 further questions of this witness.

14 THE COURT: Okay. Put that back up,  
15 please.

16 All right. This is 136.11. The top portion of  
17 that, Mr. Rogers, is that what you said was the  
18 coal tar sludge?

19 THE WITNESS: Yes.

20 THE COURT: Is that in the tank?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And the walls of the  
23 tank are how deep?

24 THE WITNESS: From the surface you're  
25 looking at, they probably go down another 3 feet.

1 THE COURT: Okay. And the tank itself, is  
2 it entirely metal?

3 THE WITNESS: Yes.

4 THE COURT: Is there a floor to that tank?

5 THE WITNESS: Yes, there was.

6 THE COURT: Okay. And was that metal as  
7 well?

8 THE WITNESS: I'm sorry?

9 THE COURT: Was that metal as well?

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you.

12 Mr. Linsin, any cross-examination?

13 CROSS-EXAMINATION BY MR. LINSIN:

14 Q. Good afternoon, Mr. Rogers.

15 A. Good afternoon.

16 Q. I will introduce myself formally, though we met  
17 before. My name is Greg Linsin. I represent  
18 Tonawanda Coke.

19 You were asked a number of questions by  
20 Mr. Piaggione regarding the -- I'm sorry, regarding  
21 the mixing of the decanter tank coal tar sludge and  
22 the material from these tanks with the coal on the  
23 coal piles, correct?

24 A. Yes.

25 Q. And you were repeatedly asked by Mr. Piaggione

1       whether this process of mixing occurred on the  
2       ground, do you recall that?

3       A.   Yes.

4       Q.   Are you familiar with the coal field itself?

5       A.   Yes.

6       Q.   And the roadways on which trucks and front end  
7       loader operators drive in the coal fields, what  
8       does -- what do those roadway consist of?

9       A.   Coal.

10      Q.   And that's the same throughout the coal field,  
11      is that correct?

12      A.   Yes.

13      Q.   And do you know, based on your years of  
14      experience there, how deep that coal is in the coal  
15      fields at the Tonawanda Coke facility?

16      A.   Anywhere between 3 and 6 feet.

17      Q.   And do you know what is beneath that 3 to  
18      6 feet of coal upon which the coal piles sit?

19      A.   Clay.

20      Q.   And do you have any reason to know how deep  
21      that clay is?

22      A.   I've been down in that clay approximately  
23      15 feet below the surface and saw solid clay.

24      Q.   All right. Now, all of the mixing that you  
25      testified about from the decanter coal tar sludge

1 and the material that was excavated from the tanks,  
2 you testified that it was mixed with the coal,  
3 correct?

4 A. Yes.

5 Q. And after it was mixed with the coal, that  
6 material was charged into the ovens, correct?

7 A. Yes.

8 Q. That was the purpose of mixing it with the coal  
9 before it could be charged back into the ovens,  
10 correct?

11 A. Yes.

12 Q. When you took or you directed people to take  
13 the material from the tanks and mix with the coal,  
14 were you telling them to dispose of this material  
15 out on the coal field?

16 MR. PIAGGIONE: Objection, your Honor.

17 MR. LINSIN: Or were you telling them to  
18 mix the material?

19 THE COURT: All right. What's your  
20 ground?

21 MR. PIAGGIONE: The issue of calling for a  
22 conclusion from this witness.

23 THE COURT: No, not on those grounds.  
24 Overruled.

25 Do you understand the question, Mr. Rogers?

1 THE WITNESS: Yes.

2 THE COURT: All right. You may answer it,  
3 please.

4 THE WITNESS: I was asking them to mix it.

5 MR. LINSIN: And when you talked to the  
6 front end loader operators -- when you see the tar  
7 tank filled up in the by-products area, and you  
8 talked to the front end loader operators and asked  
9 them to take a load out to the coal fields, were  
10 you asking them to dispose of that coal tar sludge,  
11 or to mix it on the coal piles?

12 MR. PIAGGIONE: Again, your Honor, the  
13 issue of RCRA disposal is a legal conclusion. I  
14 object.

15 THE COURT: Overruled. You may answer  
16 that question.

17 THE WITNESS: Mix it.

18 BY MR. LINSIN:

19 Q. All right. When -- based on your time at  
20 Tonawanda Coke, the mixing of the decanter tank  
21 coal tar sludge, was that done in the same way as  
22 you've just described from the time you first  
23 started at the plant until the search warrant  
24 in 2009?

25 A. Yes.

1 Q. Now, you were asked some questions as well  
2 about the concrete pad, correct?

3 A. Yes.

4 Q. And I believe you recall that -- you testified  
5 that you don't recall exactly when that was  
6 installed, correct?

7 A. No.

8 Q. Do you recall though that the concrete pad was  
9 constructed there at a time when certain coal tar  
10 sludge was actually brought to the Tonawanda Coke  
11 facility from off site?

12 A. Yes.

13 Q. And is it accurate that the concrete pad was  
14 then -- then served as a staging area or a storage  
15 area for this off-site coal tar sludge when it was  
16 brought in it by truck?

17 A. Yes.

18 Q. Now, you testified that you've had a  
19 recollection of serving as the crane operator when  
20 the pressure relief valve was installed on the coke  
21 oven gas line. Do you recall that testimony?

22 A. Yes.

23 Q. Now, do you recall a time when the pressure  
24 relief valve on that line was actually moved from  
25 one location to another on the coke oven gas line?

1 A. I don't know what you're asking.

2 Q. Okay. Do you recall that there was a pressure  
3 relief valve on the line that was deactivated, and  
4 then a second pressure relief valve was installed a  
5 little further downstream on the coke oven gas  
6 line?

7 A. Yes.

8 Q. All right. And is that the installation you  
9 have a recollection of participating in?

10 A. Yes.

11 Q. All right. So there was a pressure relief  
12 valve on that line before, but you assisted in the  
13 installation of the new location for that valve, is  
14 that correct?

15 A. Yes.

16 THE COURT: And your answer is yes?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 THE WITNESS: Sorry, your Honor.

20 THE COURT: That's okay.

21 MR. LINSIN: The Court's indulgence. Just  
22 one moment, please.

23 THE COURT: Certainly.

24 BY MR. LINSIN:

25 Q. So does it fit with your memory, Mr. Rogers,



1 that the scrapping of these old tanks and then the  
2 excavation that you talked about occurred in late  
3 summer, early fall of 2009, does that fit with your  
4 memory?

5 A. Yes.

6 Q. And when you were authorized to do this work,  
7 were you told not to do it at a certain time, or  
8 were you told to do it at nighttime so people  
9 couldn't see it?

10 A. No.

11 Q. Was your objective in excavating this tar to  
12 reuse and recycle that tar in the coke ovens?

13 A. Yes.

14 MR. PIAGGIONE: Objection, your Honor.  
15 Again recycling is an issue -- is a legal issue for  
16 this.

17 THE COURT: No. It was for reuse is the  
18 testimony. Overruled. The answer will stand.

19 BY MR. LINSIN:

20 Q. During the time that you were working with  
21 Tonawanda Coke, do you recall seeing regulators out  
22 at the facility from time to time?

23 A. Yes.

24 Q. Do you recall seeing regulators from the air  
25 division of DEC there?

1 A. Yes.

2 Q. Do you recall seeing regulators from the  
3 hazardous waste division of DEC from time to time?

4 A. Yes.

5 Q. And did the operations that you've testified  
6 about continue in the same manner you've described  
7 them when the regulators were there or not there?

8 A. Yes.

9 MR. LINSIN: I have nothing further, your  
10 Honor. Thank you.

11 THE COURT: Okay, Mr. Linsin, thank you.

12 Mr. Personius.

13 MR. PERSONIUS: Just a couple, your Honor,  
14 please.

15 THE COURT: Okay.

16 MR. PERSONIUS: I just need one quick  
17 second please.

18 CROSS-EXAMINATION BY MR. PERSONIUS:

19 Q. Good afternoon, Mr. Rogers.

20 A. Good afternoon.

21 Q. We've met before.

22 A. Yes, we have.

23 Q. And I represent Mark Kamholz. Rod Personius.

24 As your dentist will sometimes say, we're almost

25 done.

1 A. Thank you.

2 Q. Would you put Government Exhibit 3.11 up,  
3 Lauren? That's in evidence.

4 Do you remember that Mr. Piaggione asked you  
5 about this photograph of the -- it's called the tar  
6 box or tar bin?

7 A. Yes.

8 Q. Okay. This is in the by-products area?

9 A. Yes.

10 Q. And this contains the -- the coal tar sludge  
11 that's generated as part of Tonawanda Coke's  
12 operation?

13 A. Yes.

14 Q. Based on the many, many years you were at  
15 Tonawanda Coke, Mr. Rogers, could you explain to  
16 the jury how frequently this box would have to be  
17 emptied and what factors might affect that, please?

18 A. Depending on production spells out how often  
19 this has to be done. There's times when you may go  
20 three, four, five days that it doesn't get cleaned.  
21 And the wintertime also plays in it, because the  
22 tar is thicker. It's not a liquid. It becomes  
23 more of a putty, so it would pile up and not need  
24 to be cleaned as quickly. So it all depends on  
25 different factors.

1 Q. So in addition to the time of year, would the  
2 production level --

3 A. Absolutely.

4 Q. -- at the plant, that would affect it?

5 A. Yes, sir.

6 Q. Higher production you're going to have to empty  
7 it more often, lower production less often?

8 A. Yes, sir.

9 Q. The production rate at Tonawanda Coke from 2005  
10 to 2009 varied?

11 A. Yes.

12 Q. You may take that down, Lauren. Thank you.

13 You were asked about the pressure relief valve  
14 in the by-products area?

15 A. Yes.

16 Q. You told the jury that your experience was that  
17 would release?

18 A. Yes.

19 Q. Okay. You said it would release with some  
20 frequency, correct?

21 A. Yes.

22 Q. All right. Now, in your many years' experience  
23 at Tonawanda Coke, did you find that the frequency  
24 of those releases by that valve was effected by  
25 certain factors?

1 A. Yes.

2 Q. Would you explain to the jury what those  
3 factors are, please?

4 A. The adjustment of the set point could change,  
5 and production -- again, when production is  
6 relatively low, the gas pressure is not as high in  
7 the plant, thus the frequency would be less.

8 Q. Did you notice any difference in the frequency  
9 of release between summer and winter?

10 A. Not so much.

11 Q. Okay. Lauren, would you please put up  
12 Government Exhibit 136.10, which is in evidence?

13 This is the one of the photographs you were  
14 shown by Mr. Piaggione on his examination.

15 Do you recall that, Mr. Rogers?

16 A. Yes.

17 Q. And I don't know which tank is which, but this  
18 is one of the two tanks you testified about, right?

19 A. Yes.

20 Q. Or actually what's left of it. And I'm going  
21 to try this. Do you see where I put the red arrow?

22 A. Yes.

23 Q. Is that inside the tank?

24 A. Yes, it is.

25 Q. And is that -- where that arrow is pointing to,

1 is that this coal tar substance that you're  
2 referring to?

3 A. Yes.

4 Q. Did it have a -- it would appear from what we  
5 see here it would have a thickness to it?

6 A. Yes.

7 Q. Was it a thick material?

8 A. Very thick.

9 Q. Close to a solid?

10 A. Very.

11 Q. Okay. Would you please, Lauren, put up  
12 Government Exhibit 136.11, which is also in  
13 evidence.

14 If I recall correctly, this is the other  
15 tank --

16 A. Yes.

17 Q. -- that you were asked about. And the arrow  
18 happens to still be in the middle of what's left of  
19 that tank?

20 A. Yes.

21 Q. And is that the coal tar substance you're  
22 referring to?

23 A. Yes.

24 Q. At least the same thickness as you described  
25 for the other tank?

1 A. Yes.

2 Q. Okay. You may take that down, Lauren.

3 MR. PERSONIUS: Judge, may I have a  
4 minute?

5 THE COURT: Certainly.

6 MR. PERSONIUS: Your Honor, we have no  
7 more questions for Mr. Rogers. Thank you, sir.

8 THE COURT: Okay, Mr. Personius, thank  
9 you. Mr. Piaggione.

10 MR. PIAGGIONE: Yes, your Honor, just a  
11 few questions to -- on redirect to clarify.

12 REDIRECT EXAMINATION BY MR. PIAGGIONE:

13 Q. May we have 136.10 again, please?

14 Mr. Rogers, how many buckets of material from  
15 inside that tank did you remove?

16 A. Five to six end loader buckets each time I did  
17 it, and I did it approximately ten times all  
18 together.

19 Q. Ten times spread out over a period of time?

20 A. A month and a half or so.

21 Q. Okay. And how much is in a bucket?

22 A. It would depend on the thickness of the  
23 material. There would be a lot of air space on  
24 stuff that was this thick. Half bucket, four to  
25 five 55-gallon drums approximately.

1 Q. How much is that in tons?

2 A. Three to five.

3 Q. Three to five tons, so how many buckets did you  
4 say you took out?

5 A. Five to six.

6 Q. Every time you did it?

7 A. Yes.

8 Q. So that's 25 tons?

9 A. Around there, yes.

10 Q. Ten times at least?

11 A. Yes.

12 Q. So that's 250 tons?

13 A. Yes.

14 Q. Okay. And that was mixed in the coal fields?

15 A. Yes.

16 Q. Okay. And during 2005-2009, how often was the  
17 tar box emptied?

18 A. Periodically. Don't know exactly how many  
19 times. Depended on when it needed it.

20 Q. Okay. Did it happen once a day at times?

21 A. At times.

22 Q. All right. Did it happen more than once a day  
23 at times?

24 A. Depending on how thick the material, they could  
25 have gone into it twice. The size of the machine



1 also.

2 Q. And when they did that, did you know which coal  
3 pile they took it to?

4 A. No.

5 MR. PIAGGIONE: Okay. I have no further  
6 questions, your Honor.

7 THE COURT: Mr. Linsin, anything?

8 MR. LINSIN: I have nothing further.

9 THE COURT: Mr. Personius?

10 MR. PERSONIUS: Nothing, your Honor.

11 THE COURT: Okay, Mr. Rogers, you're  
12 excused. Thank you very much, sir.

13 THE WITNESS: Thank you.

14 THE COURT: Okay. Okay. I don't know,  
15 have you worked up an appetite? Why don't we break  
16 for lunch, but we'll start at 2:00 o'clock, okay?  
17 Thank you very much. Don't discuss the case. Keep  
18 your minds open please.

19 (Jury excused from the courtroom.)

20 THE COURT: Okay. We'll see everybody at  
21 two.

22 MR. LINSIN: Thank you, your Honor.

23 MR. PERSONIUS: Thank you.

24 THE COURT: Thank you.

25 (Lunch recess was taken.)

# EXHIBIT H

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violations of Article 27 of the Environmental Conservation Law (ECL) by

Tonawanda Coke Corp.  
P.O. Box 50007  
3875 River Road  
Tonawanda, New York 14150

(Erie County)

Respondent

ORDER  
ON  
CONSENT

FILE No. 08-57  
R9-20080506-32

WHEREAS:

1. Article 27 of the Environmental Conservation Law of the State of New York (hereinafter "ECL") sets forth certain requirements governing the identification, handling, collection, treatment and management of solid and hazardous waste; and, pursuant to ECL Section 27-0907, empowers the Department of Environmental Conservation (hereinafter "Department") to adopt and promulgate rules and regulations establishing standards for generators of hazardous waste.
2. Respondent owns, operates and/or maintains control of a coke manufacturing facility located at 3875 River Road,, Town of Tonawanda, County of Erie.
3. On September 6, 2007, Department Staff conducted a compliance inspection of Respondent's facility. The violations set forth below were disclosed by that inspection.
4. Pursuant to the authority of ECL Section 27-0907, Part 372, New York Codes, Rules, Regulations ("NYCRR") sets forth requirements governing the generators of hazardous waste.
5. The Department alleges that Respondent, in violation of 6 NYCRR Part 372.2(a)(8)(iv) and Part 376.5(a)(1), stored liquid PCB waste, and a concentration exceeding 50 ppm, for a period in excess of 180 days. Such waste was contained in a transformer taken out of service and stored on an outdoor pad. Respondent neither admits nor denies this allegation.
6. Respondent violated 6 NYCRR Part 372.2(a)(8)(iii)(d) and Part 373.1-1.1(d)(1)(iii)(c)(2) by failing to place an accumulation date on a transformer containing PCB

waste greater than 50 ppm.

7. Respondent, in violation of 6 NYCRR Part 372.2(a)(8)(iii)(b) and Part 373-3.9(d)(3), failed to place the words "hazardous waste" and "other words" sufficient to identify the contents on a transformer containing PCB waste greater than 50 ppm.

8. Respondent consents to the issuing and entering of this Order, pursuant to the provisions of ECL Article 27, and agrees to be bound by the provisions, terms and conditions contained herein, and hereby affirmatively waives its right to a hearing as provided by law.

NOW, having considered this matter and being duly advised, it is ORDERED:

I. THAT Respondent is hereby assessed a civil penalty in the amount of Nine Thousand Dollars (\$9,000.00) which is to be paid by certified check or money order made payable to the Commissioner of the Department of Environmental Conservation and returned along with the executed copy of this Order to the Region 9 Office at 270 Michigan Avenue, Buffalo, New York 14203-2999, Attn: Regional Attorney.

II. THAT Respondent shall fully comply with the provisions of the Schedule of Compliance attached to and made a part of this Order as Schedule A.

III. THAT if Respondent cannot comply with a deadline or requirement, because of an act of God, or, strike, riot, catastrophe or other condition which was not caused of the negligence or willful misconduct of Respondent and which could not have been avoided by the Respondent through of due care, Respondent shall apply in writing within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

IV. THAT this Order constitutes satisfaction and waiver by the Department of all legal, administrative and equitable rights or claims, action, causes of action or demands against Respondent, its shareholders, directors, officers, agents, servants, employees and any other party acting under or for Respondent and its respective heirs, legal representatives, successors and assigns in connection with the alleged violations described herein; provided however, the Department hereby reserves all its legal, administrative and equitable rights arising in common law or granted to it pursuant to statute or regulation, including, but not limited to, any summary abatement powers the Commissioner may have pursuant to Section 71-0303 of the ECL.

V. THAT no change or modification to this Order shall become effective, except as specifically set forth in writing and approved by the Commissioner or duly authorized representative.

VI. THAT Respondent shall indemnify and hold the Department, State of New York and their representatives and employees harmless for all claims resulting from the negligent or willful acts and/or omissions of Respondent in connection with the compliance or attempted compliance by Respondent with the provisions of this Order.

VII. THAT the provisions, terms and conditions of this Order shall be deemed to bind the Department and Respondent and its respective directors, officers, agents, servants, employees and any other party acting under or for either thereof and the respective heirs, legal representatives, successors and assigns.

VIII. THAT for the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to the facility in order to inspect and/or perform such test as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

DATE: July 17,  
~~June 7,~~ 2008  
Buffalo, New York

ALEXANDER P. GRANNIS Commissioner  
New York State Department of  
Environmental Conservation

By: Abby M. Snyder  
Abby M. Snyder  
Regional Director, Region 9

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: Mark L. Kamholz  
MARK L. Kamholz

Title: Manager - Environmental Control

Date: 7-1-08

Acknowledgment by a corporation, in New York State:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF Eric )

On the 1<sup>st</sup> day of July in the year 2008, before me, the undersigned,

personally appeared MARK L. Kamholz  
(Full name)

personally known to me who, being duly sworn, did depose and say that he/she/they reside at

3875 River Rd Tonawanda, NY 14150  
(Full mailing address)

and that he/she/they is (are) the  
Manager - Environmental Control  
(President or other officer or director or attorney in fact duly appointed)

of the Tonawanda Coke Corporation  
(Full legal name of corporation)

the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by the authority of the board of directors of said corporation.

LINDA L BAKER  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01BA6142946  
Qualified in Niagara County  
Commission Expires March 27, 2010

Linda L. Baker  
Notary Public, State of New York

**SCHEDULE A**

**Tonawanda Coke Corp.**

Respondent shall, on or before the dates indicated:

<u>Item</u>	<u>Due Date</u>
1. Dispose of all hazardous waste stored for a period greater than 180 days.	Done
2. Place an accumulation start date on all containers of hazardous waste.	Done
3. Mark all containers of hazardous waste with the words "hazardous waste" and "other words" sufficient to identify contents.	Done

# EXHIBIT I



**WASTE STREAM TECHNOLOGY, INC.**

302 Grote Street  
Buffalo, NY 14207  
(716) 876-5290

**Analytical Data Report**  
Report Date: 09/14/07  
Work Order Number: 7H29024

**Prepared For**  
Mark Kamholz  
Tonawanda Coke Corporation  
3875 River Road  
Tonawanda, NY 14150  
Fax: (716) 876-4400  
Site: Liquid

Enclosed are the results of analyses for samples received by the laboratory on 08/29/07. If you have any questions concerning this report, please feel free to contact me.

Sincerely,



Brian S. Schepart, Ph.D., Laboratory Director

**ENVIRONMENTAL LABORATORY ACCREDITATION CERTIFICATION NUMBERS**  
NYSDOH ELAP #11179 NJDEPE #73977 PADEP #68757 CTDPH #PH-0306 MADEP #M-NY068



Waste Stream Technology Inc.

*The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.*

Tonawanda Coke Corporation  
3875 River Road  
Tonawanda NY, 14150

Project: Env. Projects Soils/Oils  
Project Number: Liquid  
Project Manager: Mark Kamholz

Reported:  
09/14/07 16:47

**ANALYTICAL REPORT FOR SAMPLES**

Sample ID	Laboratory ID	Matrix	Date Sampled	Date Received
Liquid	7H29024-01	Oil	08/28/07 00:00	08/29/07 09:35

Waste Stream Technology Inc.

*The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.*

Tonawanda Coke Corporation  
3875 River Road  
Tonawanda NY, 14150

Project: Env. Projects Soils/Oils  
Project Number: Liquid  
Project Manager: Mark Kamholz

Reported:  
09/14/07 16:47

### Semivolatile Organic Compounds by EPA Method 8270C

Waste Stream Technology Inc.

Analyte	Result	Reporting Limit	Units	Dilution	Batch	Prepared	Analyzed	Method	Notes
<b>Liquid (7F129024-01) Oil</b> Sampled: 08/28/07 00:00 Received: 08/29/07 09:35									
N-Nitrosodimethylamine	ND	40	mg/kg	10	A170601	09/06/07	09/13/07	EPA 8270C	U
bis(2-chloroethyl)ether	ND	40	"	"	"	"	"	"	U
phenol	933	80	"	"	"	"	"	"	U
2-chlorophenol	ND	80	"	"	"	"	"	"	U
1,3-dichlorobenzene	ND	40	"	"	"	"	"	"	U
1,4-dichlorobenzene	ND	40	"	"	"	"	"	"	U
1,2-dichlorobenzene	ND	40	"	"	"	"	"	"	U
benzyl alcohol	ND	40	"	"	"	"	"	"	U
bis(2-chloroisopropyl)ether	ND	40	"	"	"	"	"	"	U
2-methylphenol	ND	40	"	"	"	"	"	"	U
hexachloroethane	ND	40	"	"	"	"	"	"	U
N-Nitrosodi-n-propylamine	ND	40	"	"	"	"	"	"	U
3 & 4-methylphenol	226	80	"	"	"	"	"	"	U
nitrobenzene	ND	40	"	"	"	"	"	"	U
isophorone	ND	40	"	"	"	"	"	"	U
2-nitrophenol	ND	80	"	"	"	"	"	"	U
2,4-dimethylphenol	ND	80	"	"	"	"	"	"	U
Bis(2-chloroethoxy)methane	ND	40	"	"	"	"	"	"	U
benzoic acid	ND	200	"	"	"	"	"	"	U
2,4-dichlorophenol	ND	80	"	"	"	"	"	"	U
1,2,4-trichlorobenzene	ND	40	"	"	"	"	"	"	U
naphthalene	6180	80	"	20	"	"	"	"	U
4-chloroaniline	ND	40	"	10	"	"	"	"	U
hexachlorobutadiene	ND	40	"	"	"	"	"	"	U
4-chloro-3-methylphenol	ND	80	"	"	"	"	"	"	U
2-methylnaphthalene	1700	40	"	"	"	"	"	"	U
hexachlorocyclopentadiene	ND	80	"	"	"	"	"	"	U
2,4,6-trichlorophenol	ND	80	"	"	"	"	"	"	U
2,4,5-trichlorophenol	ND	40	"	"	"	"	"	"	U
2-chloronaphthalene	ND	40	"	"	"	"	"	"	U
2-nitroaniline	ND	40	"	"	"	"	"	"	U
acenaphthylene	538	40	"	"	"	"	"	"	U
Dimethyl phthalate	ND	40	"	"	"	"	"	"	U
2,6-dinitrotoluene	ND	40	"	"	"	"	"	"	U
acenaphthene	279	40	"	"	"	"	"	"	U
3-nitroaniline	ND	40	"	"	"	"	"	"	U
2,4-dinitrophenol	ND	80	"	"	"	"	"	"	U
dibenzofuran	421	40	"	"	"	"	"	"	U
2,4-dinitrotoluene	ND	40	"	"	"	"	"	"	U
4-nitrophenol	ND	80	"	"	"	"	"	"	U
fluorene	405	40	"	"	"	"	"	"	U
4-Chlorophenyl phenyl ether	ND	40	"	"	"	"	"	"	U

Waste Stream Technology Inc.

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

*Maybe NOCC can burn it*

*Chris Bingham 504-3313*

Tonawanda Coke Corporation  
3875 River Road  
Tonawanda NY, 14150

Project: Env. Projects Soils/Oils  
Project Number: Liquid  
Project Manager: Mark Kamholz

Reported:  
09/14/07 16:47

#### Notes and Definitions

U Analyte included in the analysis, but not detected  
D This flag assigned to compounds identified in an analysis at a secondary dilution factor.  
DET Analyte DETECTED  
ND Analyte NOT DETECTED at or above the reporting limit  
NR Not Reported  
dry Sample results reported on a dry weight basis  
RPD Relative Percent Difference



854 River Road  
West Conshohocken, PA 19428 USA  
Telephone 1-810-828-0375 X 25  
Fax 1-810-828-9720  
Email mmorris@cooperscreekchemical.com

**Coopers Creek  
Chemical  
Corporation**

# Fax

To: Mark Kamholtz  
Terranova, CA From: Mark Morris

Fax: 716-876-4400 Pages: 2

Phone: \_\_\_\_\_ Date: \_\_\_\_\_

Re: \_\_\_\_\_ CCI: \_\_\_\_\_

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

Analysis of material that you sent to me.

**LAB ANALYSIS OF OIL SAMPLE**  
**SUBMITTED BY TONAWANDA TAR ON 10/9/07**  
**CONTACT: Mark - 716-878-8222**

**OIL IS A LOW VISCOSITY LIQUID; AMBER IN COLOR;**  
**ODOR IS CHARACTERISTIC OF PETROLEUM OILS.**

	DENSITY at 25C	REFRACTIVE INDEX	POUR POINT
Sample [as received]	0.9072	n/a	< 0 F
Sample [distilled]			
IBP = 105 C			
105 - 170 C [1.12%]	0.78	1.485	n/a
170 - 240 C [4.78%]	0.768	1.51	5 F
240 - 310 C [12.57%]	0.818	1.48	10 F
310 - 330 C [20.45%]	0.835	1.49	20 F
Residue above 330C [61.07%]	n/a	n/a	5 F

**THIS MATERIAL IS A BLEND OF OILS. APPROXIMATE COMPOSITION IS**  
**AS FOLLOWS:**

PARAFFINIC OIL	40%
NAPHTHENIC OIL	40%
AROMATIC OIL	20%
POLAR COMPOUNDS	< 1%

LAB - GLK  
10/10/2007

# EXHIBIT J



UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

**AFFIDAVIT OF  
EDWARD G. KITER**

v.

Cri. No. 10-CR-219

TONAWANDA COKE CORPORATION  
and MARK L. KAMHOLZ,

Defendants.

---

STATE OF PENNSYLVANIA       )  
COUNTY OF ERIE               ) SS.:

EDWARD G. KITER, being duly sworn, states the following:

1. I am currently employed by a company known as Direct Environmental Services. I perform Method 303 inspections on behalf of this company, which includes conducting one such inspection each week at Erie Coke Corporation, Erie, Pennsylvania.

2. I am a retired employee of the Commonwealth of Pennsylvania Department of Environmental Protection ["DEP"]. I worked for the DEP Bureau of Air Quality from 1993 to 2000, and again from 2002 to 2011. Over the four years before my retirement, I was a Compliance Specialist.

3. I am acquainted with a former DEP inspector named William Dunagan. In fact, when he first began working for the DEP, I was responsible for training Mr. Dunagan.

4. I am acquainted with defendant Mark L. Kamholz through his association with the Erie Coke Corporation.

5. At no time during my employment with the DEP was I ever informed that Mr. Kamholz had either crumpled up and thrown a Notice of Violation at Mr. Dunagan while cursing, or shoved Mr. Dunagan to the ground.

6. Either of these claimed occurrences would have been a reportable event.

7. Based upon my knowledge of Mr. Dunagan, had either of these alleged incidents actually occurred, he would have caused a written report to be prepared.

8. To the extent relevant, Mr. Dunagan is taller and has a larger build than Mr. Kamholz.

9. As well, my relationship with Mr. Kamholz as a state environmental regulator was always very positive. I found him to be most forthcoming and cooperative.

10. The suggestion that Mr. Kamholz would either crumple up a Notice of Violation and throw it to the ground while cursing, or that he would push a state regulator, is completely inconsistent with Mr. Kamholz's character and disposition.

11. I make this sworn statement freely and voluntarily.

---

EDWARD G. KITER

Sworn to before me this  
\_\_\_\_\_ day of September, 2013.

---

*Notary Public*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

**AFFIDAVIT OF  
JOSEPH P. O'HARA**

v.

Cri. No. 10-CR-219

TONAWANDA COKE CORPORATION  
and MARK L. KAMHOLZ,

Defendants.

---

STATE OF PENNSYLVANIA     )  
COUNTY OF ERIE            ) SS.:

Joseph P. O'Hara, being duly sworn, states the following:

1. I am employed at Erie Coke Corporation in Erie, Pennsylvania. My current assignment is to handle oven repairs. I served as Assistant Plant Manager and then as Plant Manager between approximately 2005 and 2007.
2. Part of my duties during this time period included the receipt and review of Notices of Violation and inspection reports provided by the Commonwealth of Pennsylvania Department of Environmental Protection ["DEP"]. These documents would either be sent to Erie Coke by certified mail, or hand delivered to the company's security office.
3. Through my employment with Erie Coke Corporation, I am acquainted with Mark L. Kamholz.
4. I have been informed that Mr. Kamholz is being accused of having crumpled up a Notice of Violation, which he then reportedly threw on the ground in the presence of DEP Inspector William Dunagan as he cursed, and of also having pushed DEP Inspector Dunagan to the ground on

a different occasion.

5. Throughout my employment with Erie Coke Corporation, I have never heard anything regarding either of these two alleged incidents.

6. As well, in connection with my past responsibility to receive and review Notices of Violation and inspection reports provided to the company by the DEP, none of these documents made reference to either of these two alleged occurrences.

7. I make this sworn statement freely and voluntarily.

---

Joseph P. O'Hara

Sworn to before me this

\_\_\_\_\_ day of September, 2013

---

*Notary Public*